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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE ALCARAZ-MENDIAZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-70237

Agency No. A75-256-268

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2008^{**}

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Jose Alcaraz-Mendez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ") decision denying his application for cancellation of

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency's continuous physical presence determination. *Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 850-51 (9th Cir. 2004). We review de novo questions of law. *Altamirano v. Gonzales*, 427 F.3d 586, 591 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the adverse credibility finding because Alcaraz-Mendez's application was materially inconsistent with his sister's testimony regarding the duration of his 1989 departure to Mexico. *Cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1231-34 (9th Cir. 2003). Moreover, Alcaraz-Mendez failed to provide sufficient supporting documentation attesting to his presence prior to 1989. The agency therefore properly concluded that Alcaraz-Mendez did not meet his burden to establish continuous physical presence. *See* 8 U.S.C. § 1229b(b)(1)(A).

Contrary to Alcaraz-Mendez's contention, the record shows the IJ used the correct legal standard in analyzing whether the duration of his departure to Mexico in 1987 broke his continuous physical presence. *See id.* § 1229b(d)(2).

We lack jurisdiction to review Alcaraz-Mendez's contentions regarding ineffective assistance of counsel because Alcaraz-Mendez failed to raise that issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004)

(requiring exhaustion of administrative remedies).

Alcaraz-Mendez's remaining contentions lack merit.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.